IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 192 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAKRAJI MAGANJI THAKOR - Petitioner(s)

Versus

KACHRABHAI KANJIDAS PATEL & 3 - Respondent(s)

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Appearance :

MR RM MEENA FOR MR YN RAVANI for Petitioner(s) : 1,
MS F.D. PATEL, AGP for respondent No.4.
RULE SERVED for Respondent(s) : 1 – 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/12/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the order dated 27.11.94 passed by the Deputy Collector, Gandhinagar as upheld by the order dated 29th June 1999 passed by the Deputy Secretary (Appeals),

Revenue Department, Government of Gujarat.

2. Short facts leading to the present petition are that the petitioner had purchased a land bearing survey No.1338/1 of village Sardhav, Taluka Gandhinagar admeasuirng 1 acre and 24 gunthas. The land was purchased on 27.1.83. Entry in this regard was made in the revenue records on 21.7.83. However, since there was a charge of some Co-operative Society on the land in question, this entry was deleted. Thereafter, once again, entry No.5439 was made on 6.9.85 which was also deleted with an observation that first the land should be deleted as a fragment and thereafter new entry should be made. Once again, an entry was made on 8.9.86 which was certified and the land was also deleted as a fragment. The Authorities issued a show cause notice to the petitioner for the first time on 13.7.94 indicating that he had breached the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter to be referred to as “the said Act”). Eventually, the Deputy Collector passed the order dated 27.11.94 holding that the said transaction was opposed to the provisions of the said Act and the same was declared as illegal. The land was ordered to be restored to the

original seller. The petitioner filed revision application before the Deputy Secretary (Appeals). The Deputy Secretary rejected the revision application of the petitioner by his order dated 29.6.95. The petitioner has therefore challenged these orders by filing the present petition.

3. From the narration of events it can be noted that the petitioner had purchased the land in question in the year 1983. Entries in this regard were also made shortly thereafter. However, initially such entries were deleted since there were technical defects. Eventually, on 8.9.86, the entry was certified. For many years thereafter the Authorities took no further steps and it was only on 13.7.94 that a show cause notice for the first time came to be issued against the petitioner. No explanation is forthcoming for issuance of a show cause notice after such an inordinate delay. In the case of Valjibhai Jagjivanbhai v. State of Gujarat, 2005 (2) GLH 34, a Division Bench of this Court held that proceedings under the said Act cannot be permitted at a belated and powers under section 9(2) and 9(3) have to be exercised within reasonable time especially when the authorities have considerable opportunities to know about the

transaction. In the present case, the petitioner attempted to make entries right away in the year 1983 itself and ultimately succeeded in getting a certified entry made in September 1986. From 1983 till 1994, the authorities were well aware about the transaction in question. However, no steps were taken to examine the legality thereof. On this ground itself, the petition is required to be allowed.

4. Additionally, I also find that the authorities have not properly addressed to the question whether the land was an irrigated land or not. The Deputy Secretary in fact observed in his impugned order that for the years 1986-87, 1987-88, 1988-89 and 1989-90, the village records indicate that bajri was grown in summer season which would indicate that no crop with the help of irrigation is grown. These observations are intriguing and self-contradictory. If it is found that bajri was grown in summer from 1986-87 to 1989-90, it is difficult to appreciate how the authority observed that no crop with the help of irrigation is grown.

5. For the above reasons, I find that the orders passed by the authorities below are required to be

quashed and set aside. Accordingly by allowing this petition, the impugned orders passed by the Deputy Collector and the Deputy Secretary are quashed. The petition is allowed accordingly. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)